

ITEM 19

STAFF REPORT ON PUBLIC COMMENT AND PROPOSED MODIFICATIONS AFTER CLOSE OF 15-DAY PUBLIC COMMENT PERIOD

TITLE 2, CALIFORNIA CODE OF REGULATIONS, CHAPTER 2.5

AB 1679

STAFF ANALYSIS

Background

In February 2000, the Commission initiated a rulemaking proposal to address statutory changes enacted by Statutes of 1999, Chapter 643 (AB 1679). The proposed regulatory action (Exhibit A) is intended to implement technical amendments to the mandate reimbursement process required by AB 1679. AB 1679 made the following changes to the mandate reimbursement process:

- Changes the definition of “test claim” to include claims joined or consolidated with the first claim filed. (Gov. Code, § 17521.)
- Extends the time for consolidating test claims and designating a lead claimant from 30 days to 90 days from the initial filing for consolidating the test claims. (Gov. Code, § 17553, subd. (b).)
- Requires the Commission on State Mandates (CSM), absent an agreement by the claimants to designate the first filing claimant as the lead claimant when there are multiple claims filed on the same statute or executive order. (Gov. Code, § 17553, subd. (b).)
- Codifies the CSM’s regulations which impose a 10-day timeline on the CSM to determine whether an incorrect reduction claim (IRC) is complete and allows the claimants 30 days, from the date of notice that an IRC is deemed incomplete, to file a completed IRC. (Gov. Code, § 17553, subd. (d).)
- Provides the State Controller with 90 days to respond to IRCs, and specifies that the State Controller’s failure to file a rebuttal to an IRC shall not delay the CSM’s consideration of an IRC. (Gov. Code, § 17553, subd. (d).)
- Reduces the time in which the CSM may order reconsideration of all, or part of any test claim, or incorrect reduction claim from 90 days to 30 days after the effective date or service of the statement of decision, as specified. (Gov. Code, § 17559, subd. (a).)
- Clarifies that reimbursement claims should be filed in a manner prescribed in the adopted parameters and guidelines rather than as prescribed by the State Controller’s claiming instructions. (Gov. Code, § 17564, subd. (b).)

- Expands CSM's jurisdiction to review and direct modification of claiming instructions. (Gov. Code § 17571.)

The purpose of the proposed regulatory action is to interpret, implement, and make specific changes as set forth in Statutes of 1999, Chapter 643.

Comments Received During 45-Day Comment Period (Exhibits B and C)¹

On July 27, 2000, the Commission conducted a public hearing on the rulemaking proposal. The 45-day public comment period also closed on that date. Written comments (Exhibit B) and testimony (Exhibit C) were received from the following persons:

1. Long Beach Unified School District, Joseph Mullender
2. Education Mandated Cost Network, Carol A. Berg, Ph.D., Consultant
3. San Diego Unified School District, James A. Cunningham, Legislative Mandate Specialist
4. Department of Finance, Jeffrey H. Bell, Lead Budget Analyst
5. Mandated Cost Systems, Inc., Paul C. Minney, Girard & Vinson
6. County of Los Angeles, John Naimo, Chief of Accounting Division

August 24, 2000 Commission Hearing (Exhibit E)

On August 24, 2000, the Commission approved the following modifications to the regulatory text:

- Modified section 1183 to require past State Board of Control and Commission decisions be filed with the test claim as applicable;
- Modified section 1183.05 giving the Executive Director 60 days to sever rather than the proposed 90 days;
- Modified section 1185 giving the claimant 30 days to resubmit a completed incorrect reduction claim;
- Modified 1185.2 deleting the standard of review applicable before the AB 1679 amendments; and
- Removed section 1185.02, relating to the withdrawal of incorrect reduction claims from the proposed rulemaking package.

Comments Received During 15-Day Comment Period (Exhibit F)²

The 15-day public comment period closed on September 11, 2000. Written comments (Exhibit F) were received from the following persons:

¹ See the accompanying Comment Matrix attached as Exhibit G.

² See the accompanying Comment Matrix attached as Exhibit G.

1. Mandated Cost Systems, Inc., Paul C. Minney, Girard & Vinson
2. The Office of the State Controller, Shawn Silva

Proposed Modifications

The comments received by Girard & Vinson raised questions concerning the Commission's process for accepting multiple test claims based on the same statute. Based on these comments, staff reviewed the proposed modification to section 1183 related to test claim filings, as well as the other sections included in this rulemaking package, and concluded that to properly address the amendments made to the Government Code by AB 1679, additional amendments to the existing regulations are required. Therefore, staff has removed the majority of the regulation sections from this rulemaking package to ensure that all sections that may be affected by the amendments to the Government Code by AB 1679 are adequately addressed. Staff will further define those regulation sections that require modification and will submit to the Commission a request for a new Order to Initiate Rulemaking to address these issues.

Staff has retained the proposed modification to section 1188.4, relating to the Commission's reconsideration of prior final decisions, to ensure that the Commission has adequate time to consider future requests for reconsideration. Staff finds that if this section were removed from the rulemaking package and not clarified at this time, the Commission may not be able to properly address future requests. Therefore, staff has modified this section to provide that a request for reconsideration will be deemed automatically stayed for 30 days thereby giving the Commission 60 days to take action on the request.

Conclusion and Recommendation

Staff recommends that the Commission approve staff's proposed regulatory text of section 1188.4 as modified after the close of the public comment period and authorize staff to make any technical, non-substantive edits to the proposed text resulting from the Commission's action.

If the Commission approves staff's proposed modifications, the modified text of section 1188.4 will be released for an additional fifteen-day public comment period. Thereafter, staff will prepare the final proposed text of section 1188.4 and present the final text to the Commission in October for adoption.

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